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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, CHAIRMAN

GARY PIERCE

BRENDA BURNS

BOB BURNS

SUSAN BITTER SMITH

2013 AUG 26 P 3:55

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

AUG 26 2013

DOCKETED BY

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IN THE MATTER OF THE FORMAL
COMPLAINT AGAINST MOHAVE
ELECTRIC COOPERATIVE, INC.
FILED BY ROGER AND DARLENE
CHANTEL.

DOCKET NO. E-01750A-09-0149

MOHAVE ELECTRIC COOPERATIVE,
INCORPORATED'S REPLY TO
COMPLAINANTS' RESPONSE TO MOTION
TO RECONSIDER MOTION TO DISMISS
FORMAL COMPLAINT

Mohave Electric Cooperative, Incorporated ("MEC") filed its "Motion to Reconsider MEC's Motion to Dismiss Formal Complaint" on July 12, 2013.¹ Complainants have recently responded. That Motion was filed for the reconsideration of MEC's Motion to Dismiss the Complainants' formal Arizona Corporation Commission ("ACC") Complaint (filed April 10, 2009) because, since that original Motion to Dismiss, Complainants have lost on their claims (in an eight count complaint) in the Mohave County Superior Court and in the Arizona Court of Appeals. All of the allegations of the Complainants' formal ACC Complaint have been demonstrated to be false and meritless in the proceedings in the Mohave County Superior Court and the Arizona Court of Appeals.

¹ The Complainants' informal ACC Complaint was summarily disposed of by Steven Olea's November 5, 2008 review of all facts and determination of no wrongful conduct by MEC – Exhibit 1. Complainants' Formal Complaint was filed on March 24, 2009. MEC's Response to the Complainants' Formal Complaint and Motion to Dismiss was filed April 10, 2009.

1 MEC contended, in its Motion for Reconsideration (of July 7, 2013), that all of
2 the issues the Complainants had raised in their formal complaint filed on March 24, 2009
3 have been effectively ruled on and disposed of. Complainants now claim (at the bottom of
4 page 1 of their Response) that the issues of their formal complaint have only been adjudicated
5 under "procedural law" (the term used by the Complainants) and that the matters have not
6 been resolved under "common or civil law" (*sic.*). Complainants' position is without any
7 legal authority – the Complainants' issues were adjudicated under the applicable law. More
8 importantly, the Complainants have received ample opportunity to exhaust all legal theories
9 while they engaged in protracted litigation (spanning three years) before both the Mohave
10 County Superior Court and the Arizona Court of Appeals.
11

12
13 Complainants state the following issues were not examined under "common
14 law or civil law":

- 15 1. Safety issues under R14-2-208 and R14-2-208 F 1;
- 16 2. Termination of Service – R14-2-211 A 3 and R14-2-208 A 5;
- 17 3. Nonpayment of bill - RR14-2-211 3;
- 18 4. Termination notice required - R14-2-211 D; and
- 19 5. Application for discontinuance/abandonment of service – R14-2-202B.

20 Those issues have indeed been addressed, as explained below:

- 21 1. Although the Complainants did not have any legitimate safety concerns,
22 the relocation of the poles and energized transmission lines resolved the
23 alleged safety concerns. Steven Olea addressed the real safety concerns
24 on page 2 of his Report. Additionally, the Complainants alleged safety
25 in paragraph 18 of their Mohave County Superior Court Complaint and
Complainants presented these issues in their pleadings before the

1 Mohave County Superior Court and the Court of Appeals. The issues
2 have been examined in two courts and by the ACC Utilities Division.

3 2. Termination of services was exhaustively examined in Steven Olea's
4 report on pages 2 and 3 and it was implied in the Complainants' Count
5 One for alleged breach of contract. This issue has been thoroughly
6 explored.

7
8 3. Nonpayment of bill (R14-2-211 3 - Non-payment of bill) only relates to
9 utilities and their customers. The Complainants misunderstand this
10 administrative rule.

11
12 4. Termination notice is actually a part of #2 above. It was amply
13 discussed by Steven Olea in the first two paragraphs of page 3 of his
14 report. The Complainants have not alleged that there are any new facts
15 to those already examined by Mr. Olea. Moreover, the Complainants
16 alleged "improper notice" for termination of their MEC account in
17 pleadings filed in the other courts (including paragraph 22 of the
18 Complaint filed in the Mohave County Superior Court).

19
20 5. Application for discontinuance/abandonment of service (R14-2-202B)
21 relates to the discontinuance of a line serving customers, not the present
22 situation where a line was rerouted because of the extreme risk to the
23 public presented by the Complainants' 6,200 square foot survivalist
24 structure.
25

1 MEC has demonstrated in its Motion for Reconsideration that the eight Counts
2 forming the basis for Complainants' Complaint were more than adequately scrutinized by the
3 Superior Court and the Arizona Court of Appeals. Moreover, the Complainants do not
4 dispute that they have lost in Mohave County Superior Court and in the Arizona Court of
5 Appeals. Finally, all claims have been scrutinized and adjudicated against the Complainants.
6 They have been assessed legal fees exceeding \$150,000. This matter must now end.
7

8 Accordingly, MEC respectfully requests this Administrative Law Judge grant
9 the Motion for Reconsideration of the previous Motion to Dismiss and further requests that
10 the Administrative Law Judge grant the Motion to Dismiss for the reason that Complainants
11 have had their claims examined and none of their claims have any merit. MEC also requests
12 that this docket be closed and that the Complainants be instructed to file nothing further in
13 this docket relative to their construction of a 6,200 square foot structure under MEC's
14 transmission lines, alleged safety issues, MEC's notice of termination of service and
15 Complainants' claims pertaining to the present location of the MEC transmission lines on the
16 property of the Bureau of Land Management and the Arizona State Land Department.
17
18

19 MEC hereafter restates the significant events that occurred following the
20 Complainants' construction of a 6,200 square foot "survivalist structure" directly under an
21 MEC transmission line that services a railroad signal on the Burlington Northern railroad
22 tracks a short distance away:

- 23 1. Mohave County declares a safety hazard and instructs MEC to terminate
24 the delivery of electricity due to an unsafe condition. MEC complies;
25

- 1 2. Subsequently, the Arizona Corporation Commission, through the
2 Utilities Division, examines the Complainants' allegations and Steven
3 Olea prepares a four-page report concluding that MEC has appropriately
4 acted in each and every instance;
- 5 3. On the property of the Complainant there are now abandoned poles and
6 lines belonging to MEC. Complainants refuse to give safe passage to
7 MEC for entry onto the premises for the removal of the poles and the
8 wire;
- 9 4. The Complainants are no longer MEC members and have no service
10 because they refuse to comply with MEC bylaws and rules. However,
11 they are in MEC's service area and have the right to service if they
12 comply with the MEC bylaws, tariffs, rules and regulations. They have
13 been furnished with an itemized cost of restoring service but they refuse
14 to pay the cost.
- 15 5. Complainants have been given their "day in court" in: their informal and
16 formal ACC proceedings; the Mohave County Superior Court; and the
17 Arizona Court of Appeals. They have not succeeded in obtaining relief
18 in any forum. Five years of litigation in one form or another must now
19 end. The matter is now *res judicata* and issue and claim preclusion must
20 be applied.

21 If Complainants want electric service, they have been advised they must
22 guarantee safe passage of MEC employees on their premises and permit the removal of the
23

1 transmission poles and wire that are no longer being used. Additionally, they must pay the
2 amounts owed under the normal service tariff rules and regulations of MEC in order to
3 establish electric service, including a deposit. They must also make arrangements for the
4 payment of the judgments entered against them by the Mohave County Superior Court and
5 the Arizona Court of Appeals.
6

7 In summary, Complainants have not presented any legitimate grounds to
8 oppose the dismissal of their formal complaint. All issues have been exhaustively reviewed
9 and resolved in favor of MEC. MEC reurges the granting of its Motion to Dismiss.
10

11 DATED this 26th day of August, 2013.

12 CURTIS, GOODWIN, SULLIVAN,
13 UDALL & SCHWAB, P.L.C.

14
15 By: 

16 Michael A. Curtis
17 Larry K. Udall
18 501 East Thomas Road
19 Phoenix, Arizona 85012-3205
20 Attorneys for Mohave Electric
21 Cooperative, Incorporated
22
23
24
25

PROOF AND CERTIFICATE OF MAILING

I hereby certify that on this 20th day of August, 2013, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 21st day of August, 2013 to:

Belinda A. Martin, Administrative Law Judge
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Janice Alward, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing mailed
this 24th day of August, 2013 to:

Roger and Darlene Chantel
10001 E. Highway 66
Kingman, Arizona 86401

Nancy Walker

EXHIBIT 1

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K MAYES
GARY PIERCE

BRIAN C. MCNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

November 5, 2008

Mr. Roger Chantel
10001 E. Hwy. 66
Kingman, AZ 86401

RE: Informal Complaint No 2008-71811

Dear Mr. Chantel:

The Arizona Corporation Commission ("Commission") has reviewed your Informal complaint, filed September 30, 2008. After receiving your call, Staff of the Commission's Utilities Division ("Staff") contacted Mohave Electric Cooperative ("MEC" or "Company") to begin its investigation. Having heard from both sides in this dispute, Staff has arrived at the following operative facts:

At some time prior to September 12, 2008, you began the construction of some type of structure on your property. The structure was being erected in the area directly beneath the lines used by MEC to provide electrical service to your house. MEC states that the area occupied by the structure falls within MEC's utility easement, limiting MEC's access to the line. The construction came to the attention of Mohave County Planning and Zoning ("MCPZ"). Because the construction constituted a public safety hazard, MCPZ issued Stop Work Orders and advised you that your electric service could be disconnected if the structure were completed. You met with representatives of both MCPZ and MEC, and the issue was discussed. At some point thereafter, construction was completed.

On September 12, 2008, MCPZ issued a letter to MEC ordering the Company to immediately de-energize the line being used to provide service to your property. MEC contacted Staff, and Staff recommended that MEC make an effort to contact you personally prior to de-energizing the line. Because the line was also being used to serve a railroad signal, de-energizing it would result in cutting power to the signal, an obviously unacceptable situation. It was therefore necessary for MEC to re-route the line to avoid your property and continue to serve the signal. MEC did so, at a cost of approximately \$12,000.00. Construction was completed on the re-routed line on September 16, 2008. MEC then spoke with Mrs. Chantel at your residence, and the line serving your residence was then de-energized on that same day.

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On October 21, 2008, MEC sent you a bill for the cost of re-routing service around your property. Although you have paid your monthly electric service bill, you have not paid MEC the re-routing charges, and MEC has refused to reinstate your service.

In your complaint, you have asked Staff to review several issues. Staff hereby provides its findings:

The primary relief you have requested is that the Commission order MEC to reinstate your electric service. Unfortunately, the Commission can not do that. The property that is the subject of this dispute is located within Mohave County. As a political subdivision of the State of Arizona, Mohave County has jurisdiction over public health and safety issues within the County. If an agency of Mohave County has interpreted Mohave County's own statutes and determined that the structure on your property constitutes a danger to the health and/or safety of the public within Mohave County, then the County has authority to take action to remedy such situations. Because MEC provides service within the County, MEC is subject to the authority of the County. MEC has no choice but to follow the lawful orders of MCPZ. Since the reason MCPZ ordered MEC to de-energize the power lines to your home resulted from the County's interpretation and enforcement of its own statutes, the Commission is without authority to order MEC to take any action contradictory to what MCPZ has directed them to do. Therefore, the Commission can not order MEC to reinstate your electric service under these conditions.

At some point, the structure at issue was labeled "art work", but frankly, the label does nothing to change the nature of the dispute. If Mohave County has found that the "art work" on your property compromises the safety of the Mohave County public, the County has the authority to take action in the public's interest.

Although A.A.C. R14-2-206(C)(2) provides additional authority for MEC to have disconnected your service in the instant circumstances, MEC did not rely on that rule in this matter. The instant dispute resulted entirely from the findings made by Mohave County. In any case, it appears that your dispute over the structure is between yourself and Mohave County. Only Mohave County has the authority to grant you the relief you have requested. The Commission is not the proper forum in which to resolve this dispute.

Also at issue in your complaint is the manner in which service was terminated. The Commission does have procedures in place governing the disconnection of service. Specifically, A.A.C. R14-2-211(C) authorizes a utility to terminate service subject to the notification requirements of R14-2-211(D).

Mohave County has stated that during the previously-mentioned meeting which took place between you, Mohave County, and MEC, you were advised that if you did not remove the structure from your property, your electric service could be terminated. Once the County ordered MEC to de-energize the line, the actual termination work took a period of four days to complete. During that time, you were aware of the nature of the

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activity. Mrs. Chantel was provided with formal notice of the disconnection on the final day of the project. Given that you were formally told disconnection would result from a failure to cease construction, it can not be argued that you did not have the notice called for in the rule.

Further, R14-2-211(B) allows termination *without* notice due to the existence of an obvious hazard to the public safety or health of the general public. Mohave County found such a safety hazard. Clearly the dispute in this matter results from Mohave County's findings and again, the Commission is not the proper forum in which to dispute those findings.

It is important to note that pursuant to A.A.C. R14-2-211(B)(2), once service has been terminated, the utility is not required to restore service until the conditions which resulted in disconnection have been corrected. As it applies to your dispute here, until Mohave County finds that the safety issue has been resolved, MEC is not required to restore your service. In addition, you have raised the issue as to whether or not MEC has the proper easements required to service your property. R14-2-206(C) provides that a failure of the customer to grant the easements necessary to provide service may constitute grounds for a utility's refusal to provide service. If it is your assertion that MEC does not have the proper easements, that issue should be resolved within any discussion of restoration of service.

You have raised the issue as to whether service might be restored to your residence using the newly-constructed line currently being used to circumvent your property and provide service to a railroad signal crossing. Unfortunately, such an arrangement is not possible. The line in question is being used merely as a backup line and has not been built according to the specification required for primary residential service. Providing service using the new line would in itself constitute a safety issue, and the utility is prohibited from doing so.

As an additional concern, you have raised the issue of medical treatment for sleep apnea. However, as R14-2-211 makes clear, the utility is only prevented from termination of service in cases where the customer has a medical need coupled with an inability to pay. The termination of service to your property did not result from an inability to pay. In your case, termination resulted from a refusal to abide by County ordinance and Commission rules. While the Commission is certainly sympathetic to your needs, MEC's decision to terminate your service appears to conform to Commission rules and procedures, and the Staff finds that no action is warranted.

Additionally, you have questioned the authority of the utility to charge you for construction costs associated with the re-routing of your service line. However, such charges are fully within MEC's authority. R14-2-206(C)(2), mentioned previously, mandates that any utility encountering the safety issues at issue here take the steps necessary to eliminate the safety issue and authorizes the utility to do so at the customer's expense. MEC is clearly acting within its authority.

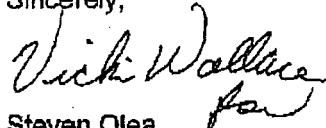
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Two final issues you have raised are the distance between utility poles and the resulting amount of line sag that results. MEC places its poles based upon issues of clearance from ground to wire and from pole to pole. These standards are dictated by professional code. According to MEC, the lines in question were built within code specifications in 1949 and remain within tolerances today. Based upon this limited inquiry, the Staff does not believe that MEC's lines are out of compliance with any of the Commission's mandates.

Based upon these facts and circumstances, Staff does not believe that MEC is in violation of Commission rules or procedures, and this informal complaint will be dismissed and closed.

If you have further questions regarding this matter, you may contact Vicki Wallace at 602-542-0818 or Connie Walczak at 602-542-0291.

Sincerely,



Steven Olea,
Assistant Director
Utilities Division

Cc: rogerchantel@frontiernet.net (letter also sent via e-mail at customer request)